

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.
---

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

SAMIA SALINAS,

Plaintiff and Respondent,

v.

CARLOS LOPEZ CRUZ,

Respondent and Appellant.

B288861

(Los Angeles County  
Super. Ct. No. 17STRO03000)

APPEAL from an order of the Superior Court of Los Angeles County, James E. Blancarte, Commissioner. Reversed.

Luis N. Valdivia for Respondent and Appellant.

No appearance for Petitioner and Respondent.

---

Carlos Cruz appeals from an order granting respondent Samia Salinas's request for a domestic violence restraining order. Cruz argues the trial court violated his right to due process by refusing to allow him to cross-examine Salinas during the evidentiary hearing. We agree, and reverse the order.

## **FACTUAL AND PROCEDURAL HISTORY**

### ***A. The Request for a Restraining Order***

In September 2017, Samia Salinas filed a request for a domestic violence restraining order against Carlos Cruz under the Domestic Violence Protection Act (DVPA). (See Family Code, § 6220 et seq.)<sup>1</sup> Salinas provided an affidavit in support of the request stating that Cruz had forced his way into her home, and then “started arguing and insulting [her] about [their] love triangle.” According to the affidavit, Cruz slapped Salinas, pulled her hair, and then “punch[ed] her with the fist [*sic*] as he was fighting with another man.” Salinas's husband, Marco Martinez, was present during the incident, but was unable to intervene because he was recovering from surgery.

Salinas asserted that she tried “to call the police but [Cruz] broke [her] phone,” and then threatened her family. Salinas stated that she went to a hospital to receive treatment for her injuries, which included bruises, body aches and headaches.

The trial court granted a temporary restraining order, and set the matter for an evidentiary hearing.

---

<sup>1</sup> Unless otherwise specified, all further statutory references are to the Family Code.

### ***B. The Evidentiary Hearing***

Salinas appeared at the hearing without counsel; Cruz was represented. The court asked Salinas whether the allegations in her declaration were true, and she testified that they were. The court then asked Cruz whether the allegations were true. Cruz admitted he got into a fight with “ex-friends” who were at Salinas’s house, but denied “lay[ing] hands on her.” Cruz’s counsel informed the court that the altercation was the “result of a sexual relationship” between Cruz and Salinas, who was married to Cruz’s brother, Marco Martinez. In response, the trial court explained that, regardless of what had caused the altercation, Salinas had testified under oath as to the assault, and the court did not find Cruz’s denial credible.

Salinas then told the court that Martinez was present outside the courtroom. The court called Martinez, who testified that Cruz had entered the residence without permission, and then assaulted Salinas by punching her “really bad,” slapping her and pulling her hair. Martinez further testified that he was unable to defend Salinas because he had recently had kidney surgery. Martinez stated that when Salinas threatened to call the police, Cruz broke her phone.

The court asked Cruz’s counsel whether he wanted to cross-examine Martinez. Counsel stated: “Your honor, I would also like to cross-examine Ms. Salinas.” The court responded, “Okay. I’ve got this witness. Let’s start with this one.” Counsel then proceeded with cross-examination of Martinez, asking him whether Cruz had entered the house to get a ring Cruz had left on the table. Martinez denied that Cruz had come into the house to get his ring, asserting that the ring had fallen off Cruz’s finger during the assault. When Cruz’s counsel began to ask another

question about the ring, the trial court directed him to stop, stating that it “did not need to know about the ring.”

Counsel, however, argued that he intended to elicit testimony showing that the altercation began because Salinas had taken Cruz’s ring, and that Cruz then acted in self-defense when attempting to retrieve the ring from the home. The court reiterated that it “did not care about the ring,” and informed counsel that Cruz “need[ed] to sustain his burden of proof . . . that none of those actions of physical abuse happened.” The court also stated that it did not find Cruz’s self-defense claim credible because Cruz was much larger than Salinas, and Martinez was recuperating from a medical procedure.

In response, Cruz’s counsel questioned the veracity of Martinez’s testimony, asserting that if Cruz had punched Salinas in the manner Martinez had described, she would have suffered more serious injuries, and the police would have been contacted. Counsel also emphasized that he had not yet “had a chance to cross-examine” Salinas, and intended to question her with respect to those issues.

Counsel then resumed his cross-examination of Martinez, asking him to describe “play-by-play” what had occurred during the incident. As Martinez was testifying how the confrontation had escalated, the court announced “it was done,” and that it was “taking the case under submission.” The court then dismissed the parties. Five weeks after the hearing, the court issued a restraining order.

## DISCUSSION

Cruz argues we must reverse the trial court's order because he was not permitted to cross-examine the petitioner, and because the order was not supported by substantial evidence.<sup>2</sup>

A court may grant a restraining order under the DVPA if the evidence establishes, "to the satisfaction of the court, reasonable proof of a past act or acts of abuse." (§ 6300.) We review the grant or denial of a restraining order under the DVPA for abuse of discretion. (*In re Marriage of Nadkarni* (2009) 173 Cal.App.4th 1483, 1494 (*Nadkarni*).) "So long as the court exercised its discretion along legal lines, its decision will not be reversed on appeal if there is substantial evidence to support it." (*Marriage of Smith* (1990) 225 Cal.App.3d 469, 480.)

As explained in more detail below, we agree that the court erred by failing to provide Cruz an opportunity to cross-examine Salinas, which deprived him of both his statutory right to present relevant evidence, and his constitutional right to due process.

### ***A. The Trial Court Violated Cruz's Statutory Right to Present Relevant Evidence***

Except for temporary restraining orders, which may be granted ex parte (§§ 241, 6300), the issuance of a restraining order under the DVPA requires notice and a hearing. (§§ 240, subd. (c), 241, 242, subd. (a).) "That hearing . . . provides the only forum the defendant in a [DVPA] proceeding will have to present his or her case." (Cf. *Schraer v. Berkeley Property Owners' Assn.* (1989) 207 Cal.App.3d 719, 733 [discussing analogous hearing provisions applicable to civil harassment injunctions under Civil Code § 527.6].)

---

<sup>2</sup> Salinas did not file a respondent's brief.

DVPA hearings are subject to section 217, which states that “the court shall receive any live, competent testimony that is relevant and within the scope of the hearing,” unless the parties stipulate otherwise, or the court makes an express “finding of good cause to refuse to receive live testimony.” (§§ 217, subds. (a) & (b).) The Legislature enacted section 217 “to alleviate the harsh effects stemming from the common practice of family law courts seeking to expedite family law proceedings by requiring litigants to rely primarily on written declarations in lieu of introducing live testimony.” (*In re Marriage of Binette* (2018) 24 Cal.App.5th 1119, 1126.)

Because the parties in this case did not stipulate to forgo oral testimony, and the court permitted live testimony, the court was required under section 217 to receive any competent testimony that was relevant, and within the scope of the hearing. (§ 217; cf. *Nora v. Kaddo* (2004) 116 Cal.App.4th 1026, 1028-1029 [based on analogous language in Code of Civil Procedure section 527.6, court erred by denying parties the opportunity to present live testimony].) Cross-examination of the party who has petitioned for the restraining order constitutes relevant evidence within the scope of the hearing. (See Evid. Code § 773 [“a witness examined by one party may be cross-examined upon any matter within the scope of the direct examination by each other party to the action”].)

Although Cruz specifically requested to cross-examine Salinas, the trial court denied that request when it abruptly terminated the proceedings during Martinez’s testimony, informing the parties it had “heard enough,” and was taking the matter under submission. The trial court’s failure to allow Cruz to cross-examine Salinas violated section 217.

***B. The Trial Court Violated Cruz’s Due Process Rights***

The right to due process set forth in the federal and state constitutions requires the government to provide reasonable notice and an opportunity to be heard before depriving a person of life, liberty, or property. (U.S. Const., 14th Amend., § 1; Cal. Const., art. I, §§ 7, subd. (a), 15; *Kentucky Dept. of Corrections v. Thompson* (1989) 490 U.S. 454, 460; *Today’s Fresh Start, Inc. v. Los Angeles County Office of Education* (2013) 57 Cal.4th 197, 212.) The due process requirement applies to restraining orders, including those issued under the DVPA. (See *Nadkarni, supra*, 173 Cal.App.4th at p. 1500; *Isidora M. v. Silvino M.* (2015) 239 Cal.App.4th 11, 22; *Ross v. Figueroa* (2006) 139 Cal.App.4th 856, 866 [party opposing domestic violence restraining order has due process right to testify, and raise questions to be posed to the moving party]; cf. *Schraer, supra*, 207 Cal.App.3d at p. 732 [due process may require oral testimony before issuing civil harassment restraining order]; *In re Jonathan V.* (2018) 19 Cal.App.5th 236, 242 [due process must be satisfied before granting restraining order under Welf. & Inst. Code § 213.5].)

Courts have long recognized the importance of cross-examination and its crucial relationship to the ability to defend against accusations, deeming it a due process right that is fundamental to a fair proceeding. (*Chambers v. Mississippi* (1973) 410 U.S. 284, 294–295; *Goldberg v. Kelly* (1970) 397 U.S. 254, 269-270; *In re Brenda M.* (2008) 160 Cal.App.4th 772, 777 [“The importance of cross-examination cannot be doubted: ‘Cross-examination is the principal means by which the believability of a witness and the truth of his testimony are tested.’”].) “Because it relates to the fundamental fairness of the proceedings, cross-examination is said to represent an ‘absolute right,’ not merely a

privilege.” (*Fost v. Superior Court* (2000) 80 Cal.App.4th 724, 733; *Fremont Indemnity Co. v. Workers’ Comp. Appeals Bd.* (1984) 153 Cal.App.3d 965, 971 (*Fremont*) [describing cross-examination as “fundamental” right].) Where, as here, a petitioner seeking a domestic violence restraining order has testified as to the incidents of abuse, the respondent has a due process right to cross-examine the witness with respect to those allegations. (Cf. *Manufactured Home Communities, Inc. v. County of San Luis Obispo* (2008) 167 Cal.App.4th 705, 711 (*Manufactured Home Communities*) [“in ‘almost every setting where important decisions turn on questions of fact, due process requires an opportunity to confront and cross-examine adverse witnesses; “An improper denial of the right of cross-examination constitutes a denial of due process”]; *Columbia etc. Steel Div. v. Ind. Acc. Com.* (1953) 115 Cal.App.2d 862, 865 [“It is a deprivation of constitutional due process to receive evidence without the opportunity to rebut and cross-examine”].)

Moreover, because we cannot know what Salinas would have said on cross-examination, or the effect such testimony might have had on the trial court’s decision, the error requires reversal. (See *Manufactured Home Communities, supra*, 167 Cal.App.4th at p. 711 [administrative board’s refusal to allow defendant to cross-examine witnesses constituted reversible error because, in the absence of “the cross-examination . . . , [the court was] unable to say how . . . the [board] would have regarded the facts in evidence in light of further facts which might have been elicited”]; *Fremont, supra*, 153 Cal.App.3d at p. 971 [“The right of cross-examination of



witnesses is fundamental, and its denial or undue restriction is reversible error”].)

**DISPOSITION**

The domestic violence restraining order is reversed. The trial court is directed to issue an order terminating the restraining order, reinstating the prior temporary restraining order and setting the matter for a new hearing within the time period proscribed under Family Code section 242. The parties shall bear their own costs on appeal.

ZELON, J.

We concur:

PERLUSS, P. J.

SEGAL, J.